

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

BERNHARDT TIEDE, II,

Plaintiffs,

v.

BRIAN COLLIER, et al.

Defendants.

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Civil Action No.
1:23-CV-1004-RP

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS TEXAS
DEPARTMENT OF CRIMINAL JUSTICE AND BRYAN COLLIER'S MOTION TO
DISMISS**

Exhibit 7

Excerpts from Hearing Testimony of Fmr. TDCJ Health
Services Liaison Phyllis McWhorter, M.D.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KEITH COLE, ET AL * 4:14-CV-01698
*
VS. * 10:09 A.M.
*
BRYAN COLLIER, ET AL * JUNE 23, 2017

INJUNCTION HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
Day 5 of 9 Days

APPEARANCES:

FOR THE PLAINTIFFS:

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FOR THE DEFENDANTS:

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Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

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1 THE COURT: Ms. McWhorter, is she in the
2 courtroom?

3 MS. O'LEARY: I'm sorry. We sent someone to
4 go -- she is just outside, Your Honor.

10:35:05 5 THE COURT: Okay. Good morning. If you could
6 make your way up here. We're going to have you in the
7 seat nearest me.

8 THE WITNESS: Okay.

9 THE COURT: Before you take your seat, Mr. Rivera
10:35:28 10 will administer the oath.

11 (Witness sworn by the case manager.)

12 THE WITNESS: Yes.

13 THE COURT: Please have a seat and try to adjust
14 the mic so you can speak directly into it.

10:35:39 15 MS. O'LEARY: May I have the defendants' inside
16 computer, please. Thank you.

17 **PHYLLIS MCWHORTER,**
18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

10:35:44 20 BY MS. O'LEARY:

21 **Q.** Good morning.

22 **A.** Good morning.

23 **Q.** Will you please tell the Court your job title.

24 **A.** I'm a registered nurse. I'm the manager for the
10:35:52 25 office of the Mental Health Services Monitoring and -- I'm

1 THE COURT: All right. Let's go.

2 Q. (By Mr. Edwards) All right. Before we get into this,
3 ma'am, you understand that the Pack Unit is a geriatric
4 unit, correct?

11:03:53

5 A. Yes.

6 Q. And that means that it has a higher percentage of
7 older people?

8 A. Yes.

11:03:59

9 Q. And I mean -- when I say that, I mean older than 65,
10 right?

11 A. Yes.

12 Q. And you know that the people at Pack, the inmates at
13 Pack are going to have significant mobility issues; isn't
14 that correct?

11:04:07

15 A. In some cases, yes.

16 Q. Okay. And you know you have to make accommodations
17 for these people in light of their mobility issues; isn't
18 that correct?

19 A. Yes.

11:04:16

20 Q. Okay. Now, with regard to I think what, Judge
21 Ellison -- I may be repeating myself. But no one at TDCJ
22 Health Services, that's your office, has ever looked at
23 which prison housing areas are air-conditioned; isn't that
24 correct?

11:04:31

25 A. Correct.

1 Q. Okay.

2 MR. EDWARDS: Could you go to -- yeah.

3 Q. (By Mr. Edwards) And I just want to -- this bears
4 repeating because it is, frankly, astonishing to me -- but
5 I'll withdraw that.

11:04:41

6 According to TDCJ policy, "Health Services Liaison
7 cannot --" in italics, "-- request reassignment to an
8 air-conditioned or climate-controlled environment"?

9 A. That is the practice of HSL, yes.

11:04:57

10 Q. And so the record is clear -- and you have got it a
11 little better than me -- "cannot" is --

12 MR. EDWARDS: And can you move to that particular
13 portion of the document.

14 Q. (By Mr. Edwards) "Cannot" is emphasized in italics,
15 right?

11:05:08

16 A. Correct.

17 Q. And you told me you have no idea why that would be
18 TDCJ policy; isn't that correct?

19 A. It is not the role of that office. That's the only
20 thing I know to say about it.

11:05:18

21 Q. Did you tell me on Friday you have no idea why that
22 would be the policy?

23 A. Correct.

24 Q. And you are the manager who assesses heat-related
25 illnesses, right?

11:05:31

1 to it.

2 **Q.** (By Ms. O'Leary) About in the second sentence, where
3 does it say Mr. Huerta was when this incident occurred?

4 **A.** He was -- he chose to participate in the afternoon
5 recreation period.

6 **Q.** Okay.

7 **A.** He worked out by jogging around the recreation yard
8 several times and lifting weights.

9 **Q.** Okay. Thank you.

10 MR. EDWARDS: Now, can I see Plaintiffs' 116.

11 **Q.** (By Ms. O'Leary) Now, Mr. Edwards asked you whether
12 Health Services Liaison can assign inmates to units solely
13 based on air-conditioning. Oh, and what was your answer
14 to that?

15 **A.** They cannot.

16 **Q.** Right. Because the policy says that?

17 **A.** Yes.

18 **Q.** Okay.

19 MS. O'LEARY: Will you scroll down to geriatrics
20 row, the geriatric row.

21 **Q.** (By Ms. O'Leary) Okay. With regard to geriatric
22 units, is the Pack Unit a geriatric unit?

23 **A.** Yes.

24 **Q.** Okay. Is it a Type I, Type II or Type III?

25 **A.** Type I.

1 **A.** No.

2 **Q.** Okay. Do you conduct wellness checks?

3 **A.** No.

4 **Q.** Do you have patient interaction at all?

12:21:07

5 **A.** No. I have no direct patient contact.

6 **Q.** And for the record, you don't go -- you don't work at
7 a unit?

8 **A.** No.

12:21:17

9 **Q.** All right. Is it part of your job to know how
10 officers are trained to do wellness checks?

11 **A.** No.

12 **Q.** So when Mr. Edwards asked you whether you think
13 officers should be trained to perform wellness checks, do
14 you know if they are trained at all?

12:21:32

15 **A.** I don't know whether they are.

16 MS. O'LEARY: I pass the witness.

17 THE COURT: Okay. Any recross?

18 MR. EDWARDS: Briefly, Your Honor.

19 **RECROSS-EXAMINATION**

12:21:40

20 BY MR. EDWARDS:

21 **Q.** I think you said "sometimes, yes," with regards to
22 this Duncan facility, air-conditioning can be factored in,
23 right?

24 **A.** By the providers requesting it, yes, sir.

12:21:58

25 **Q.** Other than that, you can't, correct?

1 MR. EDWARDS: No. As long as we can incorporate
2 her prior testimony as the Court ordered previously. Oh,
3 we may have some rebuttal testimony from inmates; but that
4 would be at the close of evidence.

03:57:47

5 MR. JAMES: We just -- we just figured out the
6 names of inmates. We haven't conferred with opposing
7 counsel, but we'll submit writs.

8 THE COURT: Okay. That is fine. Thank you.

9 (Proceedings concluded at 3:57 p.m. and continued on
10 Day 6.)

11 *Date: July 27, 2017*

12 ***COURT REPORTER'S CERTIFICATE***

13 *I, Laura Wells, certify that the foregoing is a*
14 *correct transcript from the record of proceedings in the*
15 *above-entitled matter.*

16
17 /s/ Laura Wells

18 *Laura Wells, CRR, RMR*